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THE

AMERICAN LAW REGISTER.

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FEBRUARY, 1853.  
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THE LATE HONORABLE JOHN SERGEANT,

OF PHILADELPHIA.

It is our duty to record the death of this distinguished member of the bar. He died at his residence in the city of Philadelphia, on the 23d day of November, 1852, in the seventy-third year of his age, beloved, honored and revered; after a long life of usefulness and distinction, which had been devoted to his profession and his country. It is not probable that under changed and still changing circumstances, such a man can be again looked for in this country. The habits of society, the rigid demands of the profession and (perhaps we might say) its lowered tone of feeling, tend to forbid this expectation, unless some radical change should take place. It is believed that no statesman except John Sergeant, has obtained a position in the halls of Congress by the side of Lowndes, Calhoun, Clay and Webster, and at the same time retained an acknowledged standing at the head of our profession, unsurpassed by any competitor. It might be deemed invidious to enlarge upon this idea. There have been others who have exhibited the same eloquence at the forum as at the capitol; but we are addressing the

profession, and they will recognize the difference between eloquent and occasionally even learned argument, and the ready preparation of the trained lawyer.

Mr. Sergeant was born in this city, at a house, until recently standing in Third street, above New street. He was the second son of Jonathan Dickinson Sergeant, himself a distinguished lawyer, and the first Attorney General of the State of Pennsylvania after the adoption of the new constitution in 1799, an ardent whig of the Revolution, and a member of the Congress of 1777. He was one of the Committee of Public Safety, who volunteered to aid and minister to the destitute sick in the pestilence of 1793, and after an eminent but short professional career, fell a victim to the cause of humanity in performing his duties as a member of that committee.

Mr. Sergeant, after graduating at Princeton College in the year 1795, entered the counting-house of the Messrs. Perot, eminent merchants of this city, and for whom he entertained great respect until the close of his life. This occupation, however, did not suit his temperament. His mind was too self-reflective, and required the exercise of intellectual struggles and scientific pursuits. He gave up mercantile avocations, and entered the office of the late Jared Ingersoll, as a student of law, and was admitted to the bar of the Court of Common Pleas of this county, in July, 1799, at the age of 19 years and 7 months.

His success at the bar was rapid and great. Full professional employment met him at once: and he continued, with the intervals devoted to public service, in the pursuit of his profession down to the close of the year 1850, a period of labor which very few lawyers have been able to endure.

While yet a young man, he was offered by Governor McKean, the recordership of the City of Philadelphia, a post of honor and profit, then generally held by distinguished lawyers who at the same time continued to pursue their profession. It was certainly an honor of no mean nature, to be selected at an early age by so eminent a lawyer as Governor McKean, to fill an office lately held by the distinguished Alexander James Dallas.

In 1805 and 1807, Mr. Sergeant was a member of the Legislature of Pennsylvania, for the city of Philadelphia, and in 1815 he began his congressional career, being elected as the representative of the District then composed of the City and County of Philadelphia, and the County of Delaware, in the place of General Williams, who had died after his election. He continued in the House of Representatives until the year 1821, when he declined a re-election, and retired to private life. For the last session (of 1820 and 1821,) Mr. Sergeant was returned without opposition, by a vote of above twelve thousand.

In 1826, he was appointed Minister from the United States, to meet the Plenipotentiaries then expected to assemble at Tacubaya, in Mexico. This Congress, however, as is well known, did not meet, on account of the disturbances which occurred in South America, and Mr. Sergeant returned to the United States in July, 1827. In the following October he was sent to Congress by the City of Philadelphia for one year, after which he again retired to private life. We find him, however, once more in the halls of the National Legislature in 1840 and 1841, as a representative of the City of Philadelphia; but after the close of this session he declined serving the public any longer in that capacity. On General Harrison's election to the office of President of the United States, he was offered a place in the Cabinet, but refused the appointment; and shortly afterwards declined the offer of President Tyler, of the mission to Great Britain. In 1838, he presided over the convention to alter the Constitution of this State; and in 1832 he was the Whig candidate for the Vice-Presidency of the United States, Mr. Clay being the Whig candidate for the Presidency at the same time. The last public duty which he performed was in 1847, when he was appointed on the part of the United States, by Mr. Marcy, then Secretary of War, with the entire concurrence of President Polk, to settle and determine the differences existing as to the Pea Patch; to which appointment the States of Delaware and New Jersey assented, presenting a remarkable instance of the universal confidence in the ability and integrity of Mr. Sergeant, and thus affording the means of settling a question which might have been productive of serious difficulty.

In this case the United States claiming the "Pea Patch," had a decision in their favor in the Circuit Court of the United States, for the District of Delaware; the Claimants in opposition, under the State of New Jersey had had similar success in the District of New Jersey; and neither party was willing to consider itself defeated, nor to carry the case to the Supreme Court of the United States.

In 1851, Mr. Sergeant presided at the meeting held in this City, to express the sentiments of the citizens of Philadelphia, of all parties, on the subject of the preservation of the union of these United States. This was his last appearance in public, and was a fitting conclusion to his public life.

On the death of Judge Baldwin, President Tyler offered Mr. Sergeant a seat on the Bench of the Supreme Court of the United States. This honor, however, he respectfully declined, on the ground that he was then past sixty years of age: but wishing the appointment tendered to a friend, he desired that the offer to him, and his refusal of it, should not be made known.

Mr. Sergeant, for a period of some thirty-five years, had perhaps as extensive a practice as any one before the Supreme Court of the United States, and the members of that Bench never failed to perceive and acknowledge his extraordinary powers. One of them recently said that his briefs were the best prepared of those presented to the Court, and in the reports of his arguments in Wheaton, Peters and Howard, the profession will find a record of Mr. Sergeant's labors, learning and mind.

As an advocate, and especially before a jury, it is believed that Mr. Sergeant has never been surpassed by any one at this bar. With a quick perception, great inventive powers, and a ready wit, accompanied where proper with withering sarcasm, few could cope with him. He had, besides, great command of pure Saxon English. His language was plain and readily understood by the un instructed, as well as by others. His manner was animated,—his eye piercing,—and his voice of extraordinary compass and power. To all these qualities he added an excellent elocution. Probably the last exhibition of these qualities which he made, was in the

District Court of the United States for this district, in the case of *The United States v. James W. Hale*, involving the discussion of the question of private mails, in the year 1844. Those who heard him, will never forget his manner and gesticulation. Mr. Sergeant possessed great quickness of observation of men and things. If any one passed him, he caught in an instant, without the appearance of any attention, every peculiarity of the person before him. His master in rhetoric and elocution was Quintilian. He read and studied again and again the work of that celebrated orator. The copy which he used,—but not now to be found,—belonged to the late Judge William Bradford, and bore the marks in manuscript, of the profound study of it by the latter.

We have alluded to the standing of Mr. Sergeant, as a lawyer, with the Supreme Court of the United States. Here, in our own State, it was no less. Governor (Chief Justice) McKean's estimate of him, we have already referred to. At the request of Chief Justice Tilghman, Mr. Sergeant received the son-in-law of the former as a student of law in his office.

For the twenty years which formed the corporate existence of the second Bank of the United States, Mr. Sergeant was its counsel. His advice must have been sought and given on points and questions every day arising to an immense extent, upon a vast variety of subjects, often upon the spur of the occasion, and without time for mature consideration; and yet it was remarked by the officer of that institution, who had the most frequent occasion to consult him, and who was conversant with almost all the legal questions and difficulties which the business of that bank presented, that he never knew him to err in the slightest degree on a single point; a test of professional learning, quickness and judgment, to which few others could have been subjected with the same result.

In these remarks, we have confined ourselves to Mr. Sergeant, as the lawyer. As a statesman, his character is before the nation, and his reputation is spread everywhere throughout the union. Some of his congressional, and many of his public addresses on different occasions, have been printed. To them we need not refer.

Mr. Sergeant's professional success was of course accompanied by its usual reward, and his heart and his purse were open to every call of philanthropy and charity, and his gifts must have been to an extent at the time, and even yet, unknown to us. He in fact met every appeal promptly, cheerfully and generously.

Mr. Sergeant's moral worth and rectitude were of an exalted character. He was a man of truth in the highest sense of the term. But he was more,—he was an humble, pious Christian, and his religious faith he applied to his every-day duties ; to use his own language, when referring to such matters :—“ In such matters, however, as I have often remarked to you, our judgment is feeble and imperfect. We can see but a little way, and that indistinctly. A conscientious effort to do our duty, with a disposition at all times submissive to Him, who rules the universe, and a continual sense of his presence, afford the best security for good conduct and the tranquillity it inspires.”

RECENT AMERICAN DECISIONS.

Circuit Court of the United States for the Third Circuit. October Sessions, 1839.

SAMUEL MILLER, JUNIOR, vs. ARCHIBALD MCELROY.¹

1. Whether an author who gives his work to the public, by printing and publishing it in a newspaper, not protected by any copy-right, can have such a right in the same work by afterwards publishing it in a different form, as in a volume or book.—*Qu.*
2. Whether the deposite of a title page in the clerk's office, when the work it was intended for was not then printed, nor written, nor the manuscript prepared for printing and publication, although the notes or materials from which the work or

¹ The editors of the Law. Reg. are indebted to Wm. H. Crabbe, Esq., of the Philadelphia Bar, for the report of this case.